HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION NO. 7335 OF 2007

BETWEEN:

The Government of Andhra Pradesh,
Rep. by its Secretary, Education Department,
Secretariat, Hyderabad and another

……Petitioners

And

Sri V. Kondayya

……Respondent

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:: O R D E R ::

Counsel for the petitioner : Government Pleader for Services -I

24th April 2007

Per G.S. SINGHVI, CJ

Whether the petitioners could withdraw the benefits of increments granted to the respondent without complying with the

basics of natural justice is the question which arises for determination in this petition filed by the Government of Andhra Pradesh and another for quashing order dated 19.12.2006 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (for short, 'the Tribunal') in O.A.No.3201 of 2001.

The respondent, who is presently working as Lecturer (Civil Engineering) in Andhra Polytechnic, Kakinada, possesses the masters degree in Civil Engineering. In 1999, he was given the benefit of advance increments in terms of G.O.Ms.No.580, Education (TE.2) Department, dated 03.12.1998. After two years, petitioner No.2 i.e. the Commissioner of Technical Education issued memo No.G4/16015/2000 dated 02.12.2000, the implementation of which would have resulted in withdrawal of increments already granted to the respondent. The same would have been the fate of other similarly situated lecturers. Therefore, eight of them including the respondent filed O.A.No.3201 of 2001 questioning the legality of memo dated 02.12.2000. They pleaded that the benefit of increments already granted to them could not have been withdrawn by petitioner No. 2 and, in any case, such an action could not have been taken without hearing them.

In the counter affidavit, which is shown to have been prepared on 16.12.2006 but was not filed in the Tribunal (copy of the counter has been filed with the writ petition as Ex.P3), it has been pleaded that the applicants are not entitled to the benefit of advance increments because they do not possess the qualifications prescribed for grant of advance increments.

The learned Chairman of the Tribunal referred to the decision of O.A. No. 79 of 2001 and quashed memo dated 02.12.2000. This is evinced from paragraph 10 of the impugned order, which is reproduced below:

> " After perusing the contents of the O.A., and the reliefs claimed therein and set forth in para-1, supra, vis-à-vis G.O.Ms.No.580 dated 03.12.1998 and G.O.Ms.No.4, dated 01.01.1998, vis-à-vis, the Memo dated 26.07.2000 of the 2nd respondent , vis-à-vis, the factum of non-filing of Counter-Affidavits by either of the two Respondents, and, thereby, they, not disputing, or, denying, any of the material adverse averments made by the applicants, in the O.A., and the reliefs claimed by them, therein, vis-à-vis, the arguments of the learned Counsel, I am satisfied, that, the applicants are entitled for the reliefs claimed by them in the O.A., and set forth in sub-para (a) of para-1, supra, being to set aside the Memo, dated 02.12.2000, of the 2nd respondent, as illegal, arbitrary and void, etc., and that, the same is warranted accordingly as is being done, hereunder."

We have heard learned Government Pleader and perused the record.

In our opinion, even though the order under challenge is not cohesive, the same does not call for interference under Article 226 of the Constitution of India because it is an undisputed position that before taking decision, the implementation of which would have adversely affected the emoluments payable to the respondent and other similarly situated lecturers, the petitioners did not give any action-oriented notice and opportunity of hearing to either of them. Therefore, it must be held that the memo dated 2.12.2000, which was subject matter of challenge before the Tribunal, was vitiated due to violation of rules of natural justice and the Tribunal did not commit any error by nullifying the same.

In **State of Orissa v. Dr. (Miss) Binapani Dei**[1], the Supreme Court considered whether the rules of natural justice are applicable to purely administrative actions and answered the same in affirmative. The propositions laid down in that judgment read as under:

> " 1) An order by the State to the prejudice of a

person in derogation of his vested rights may be made only in accordance with the basic rules of justice and fair play. The deciding authority, it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give the person against whom an enquiry is held an opportunity to set up his version or defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that a party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case.

2) It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence."

The same view has been reiterated in **Maneka Gandhi v. Union of India**[2] and **Olga Tellis v. Bombay Municipal Corporation**[3].

By applying the ratio of the above-noted judgments to the facts of this case, we hold that the Tribunal did not commit any illegality by quashing memo dated 02.12.2000 issued by petitioner No.2.

In the result, the writ petition is dismissed. However, it is made clear that the order passed by the Tribunal and the one passed by this Court will not preclude the competent authority from passing fresh order in the matter in accordance with law and after complying with the rules of natural justice.

As a sequel to dismissal of the writ petition, W.P.M.P.Nos. 9345 and 10393 of 2007 filed by the petitioners for interim relief are also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

24.04.2007
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[1] AIR 1967 SC 1269
[2] AIR 1978 SC 597
[3] AIR 1986 SC 180